

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 14

NOVEMBER 29, 1980

No. 48

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80-271)

Public Law 96-39—Customs Regulations Amended

Conforming amendments required by the Trade Agreements Act of 1979

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Trade Agreements Act of 1979 made numerous changes to various provisions of law presently administered in whole or in part by the Customs Service.

This document amends various parts of the Customs Regulations to reflect and implement those provisions of the act relating to dumping and countervailing duties, the generalized system of preferences accorded to articles imported from designated beneficiary developing countries, the collection of duties and taxes on imported distilled spirits, protests, and petitions by American manufacturers, producers, and wholesalers against decisions of district directors of Customs.

EFFECTIVE DATE: The amendments are effective on the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Marcia Kaplan, Entry Procedures and Penalties Division, 202-566-5778 (secs. 10.171 (a) and (b), and 10.176 (a), (b), and (c); John Holl, Office of Inspection, 202-566-5354 (secs. 19.15(g) (1) and (2), 144.15(b), and 159.4); John E. Elkins, Regulations and Research Division, 202-566-8237 (pts. 113, 153, and 159, relating to countervailing and antidumping duties); James Hill, Classification and Value Division,

202-566-5786 (pts. 174, 175, and 177); Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Trade Agreements Act of 1979, Public Law 96-39, 93 Stat. 144 (the Act), approves and implements the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations (the MTN). The act consists of 11 separate titles relating to the following areas:

- Title I, Countervailing and Antidumping Duties;
- Title II, Customs Valuation;
- Title III, Government Procurement;
- Title IV, Technical Barriers to Trade (Product Standards);
- Title V, Implementation of Certain Tariff Negotiations;
- Title VI, Civil Aircraft Agreement;
- Title VII, Certain Agricultural Measures;
- Title VIII, Treatment of Distilled Spirits;
- Title IX, Enforcement of U.S. Rights;
- Title X, Judicial Review; and
- Title XI, Miscellaneous Provisions.

The provisions of Title I, Countervailing and Antidumping Duties, were the subject of documents prepared by the Department of Commerce. Title II, Customs Valuation, was the subject of a notice of proposed amendments published in the Federal Register on March 31, 1980 (45 F.R. 20912). Customs is presently consulting with various agencies regarding regulations to implement that portion of Title III, Government Procurement, involving Customs. Consultations are also underway with the Department of Agriculture regarding regulations to implement section 506, Title V, Implementation of Certain Tariff Negotiations, relating to certain fresh, chilled, or frozen beef. Regulations implementing these titles as they relate to Customs will be the subject of a separate document. Title VI, Civil Aircraft Agreement, was the subject of a notice of proposed amendments published in the Federal Register on January 8, 1980 (45 F.R. 1633). There is no need to amend the Customs Regulations as a result of the changes made by Title IV, Technical Barriers to Trade (Product Standards); Title VII, Certain Agricultural Measures; and Title IX, Enforcement of U.S. Rights. Accordingly, this document relates only to amendments to the Customs Regulations as a result of the provisions of Title I, Countervailing and Antidumping Duties; Title VIII, Treatment of Distilled Spirits; Title X, Judicial Review; and Title XI, Miscellaneous Provisions. These titles and changes to the Customs Regulations are discussed below.

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTIES

Title I repealed the Antidumping Act, 1921 (19 U.S.C. 160 et seq.), and significantly amended section 303, Tariff Act of 1930 (19 U.S.C. 1303), relating to the assessment of countervailing duties.

Subsequent to the foregoing legislative action, Reorganization Plan No. 3 of 1979 (44 F.R. 69273, Dec. 3, 1979), transferred responsibility for the administration of the antidumping and countervailing duty laws from the Secretary and General Counsel of the Department of the Treasury, and from the Department itself, to the Secretary of Commerce. The transfer of functions was made effective on January 2, 1980, by Executive Order 12188 (45 F.R. 989). Notice of the transfer was published as T.D. 80-133 in the Federal Register on May 28, 1980 (45 F.R. 35803).

The International Trade Administration, Department of Commerce, published new countervailing and antidumping duty regulations in the Federal Register on January 22, 1980, and February 6, 1980, respectively (45 F.R. 4932, 8182), to implement the statutory changes made by the act. The antidumping regulations are contained in part 353 of new chapter III, title 19, Code of Federal Regulations (19 CFR ch. III). Countervailing duty regulations appear as part 355 of chapter III.

Because of the statutory changes and transfer of functions described above, parts 113, 153, 159, and 177, chapter I, title 19, Code of Federal Regulations (19 CFR ch. I, pts. 113, 153, 159, and 177), are being amended as follows:

1. Section 113.14(q), Antidumping Bond, Customs Form 7591 is being deleted;
2. Part 153, Antidumping, is being deleted;
3. Section 159.41, Antidumping duties, is being amended to refer to the new Department of Commerce regulations;
4. Section 159.47, Countervailing duties, is being amended to refer to the new Department of Commerce regulations;
5. A new section 159.58, pertaining to the suspension of liquidation in antidumping and countervailing duty cases, is being added; and
6. Section 177.0, Administrative rulings, is being amended to delete the references to parts 153 and 159.

TITLE VIII—TREATMENT OF DISTILLED SPIRITS

Title VIII, as it relates to Customs, eliminates the current wine-gallon method of taxing and levying duties on foreign distilled spirits. The taxes and duties are to be assessed under the proof gallon method

based both upon the volume of spirits and its alcoholic content (i.e., a lower tax on 86 proof than on 100 proof given the same volume).

This title also increases the duty on distilled spirits of countries not providing adequate reciprocal concessions to the United States and permits reductions in import duties on distilled spirits from countries providing reciprocal concessions. In the latter case, if the President finds that trading partners are not implementing their concessions, duties would subsequently be increased to the level of protection prevailing under the tax and duty system in effect on January 1, 1979.

Finally, title VIII establishes an all-in-bond administrative system for collecting excise taxes on domestic distilled spirits and imported bulk distilled spirits bottled domestically. It also defers for an additional 15 days, phased in over 3 years, the period for collection of the excise taxes from domestic producers, and authorizes the transfer of certain distilled spirits for exportation to any Customs bonded warehouse and not just a warehouse at an exterior port as provided by section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311).

Because section 5521, Internal Revenue Code, as amended (26 U.S.C. 5521), is repealed by section 807 of the act, sections 19.15(g)(2) and 144.15(b), Customs Regulations (19 CFR 19.15(g)(2), 144.15(b)), are being amended to eliminate the reference to 26 U.S.C. 5521. Section 19.15(g)(1) is being amended to eliminate the requirement that articles withdrawn for transportation and delivery to a bonded storage warehouse for the sole purpose of immediate export be destined for a warehouse at an exterior port. Sections 159.4 (a) and (b)(1), Customs Regulations (19 CFR 159.4 (a) and (b)(1)), are being amended to provide for the proof gallon method of taxing and levying duties on foreign distilled spirits.

TITLE X—JUDICIAL REVIEW

Title X revises section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), to provide increased opportunities for appeal of certain interlocutory and all final rulings by the Department of Commerce, or the U.S. International Trade Commission in antidumping and countervailing duty cases. The title amends the Tariff Act of 1930 by adding a new section 516A (19 U.S.C. 1516A), which provides specific judicial review procedures for countervailing duty and antidumping proceedings. Existing section 516 has been amended to delete those provisions dealing with antidumping and countervailing duty determinations, and includes procedures for a domestic interested party's contest of appraised value, classification, or the rate of duty of imported merchandise. The title also expands opportunities for judicial review of determinations by Customs of the appraised value, classi-

fication, or rate of duty of imported goods. Furthermore, title X provides for judicial review of Customs decisions regarding the certification of the country of origin of products covered by Title III, Government Procurement.

Sections 174.12 and 174.13, Customs Regulations (19 CFR 174.12, 174.13), are being amended to expand the list of those individuals who may file a protest against decisions of the District Director of Customs and the time for filing a protest and the content of the protest when a surety is involved.

Section 174.30, Customs Regulations (19 CFR 174.30), is being amended to require that the notice of denial of the protest include a statement of the reasons for denial and a statement informing the protesting party of the right to file a civil action contesting the denial.

The heading to part 175 and sections 175.0, 175.2(a), 175.11(b), 175.12(a), 175.21(a), 175.21(b), and 177.0, Customs Regulations (19 CFR pts. 175, 175.0, 175.2(a), 175.11(b), 175.12(a), 175.21(a), 175.21(b), 177.0), are being amended to substitute domestic interested party for American manufacturer, producer, or wholesaler. Domestic interested party is being defined in section 175.3. Sections 175.1 and 175.2, Customs Regulations (19 CFR 175.1, 175.2), are being amended to include a request for appraised value determination with the listing of areas for which a petition may be filed. A new section 175.31 is being added to require publication of a notice of a decision of the Customs Court or Court of Customs and Patent Appeals which sustains in whole or in part a cause of action before either court.

TITLE XI—MISCELLANEOUS PROVISIONS

The only aspects of title XI affecting the Customs Regulations are those relating to the Generalized System of Preferences (GSP). Title XI amends GSP as follows:

(1) The President is permitted to continue GSP treatment for eligible articles, and to designate new eligible articles, from beneficiary developing countries which exceed the competitive need limitation, i.e., no more than 50 percent of total annual U.S. imports of an article eligible for GSP may come from one country, if total imports of the article are less than \$1 million (adjusted annually to reflect changes in the gross national product).

(2) The customs union rule which permits such entities to be considered a single country for GSP, has been changed to:

(a) Permit associations of countries contributing to comprehensive regional economic integration among their members to be designated as a single beneficiary developing country;

(b) Permit application of the competitive need ceilings on GSP treatment (total annual imports of an eligible article from any one country may not exceed (1) about \$41.9 million, or (2) 50 percent of total U.S. imports of the article) for a specific article from an association of countries described above to the individual member countries of such an association rather than to the association as a whole; and

(c) Reduce the minimum value-added requirement for GSP articles from such an association from 50 percent to 35 percent, the requirement applicable to individual countries.

(3) The exclusion of members of the Organization of Petroleum Exporting Countries (OPEC) from GSP would be modified to allow extension of GSP treatment to eligible articles from OPEC otherwise qualifying as beneficiary developing countries if they:

(a) Conclude bilateral product-specific trade agreements with the United States in the MTN, and

(b) Continue to supply petroleum to the United States.

Other than technical amendments to sections 10.171 (a) and (b) and 10.176(c), Customs Regulations (19 CFR 10.171 (a) and (b), 10.176(c)), to modify the citation to the Trade Act of 1974 and to reserve section 10.176(b) Customs Regulations (19 CFR 10.176(b)), the only substantive change being made is an amendment to section 10.176 relating to country-of-origin criteria to incorporate the expanded coverage pertaining to associations of countries contributing to comprehensive regional economic integration among their members.

INAPPLICABILITY OF PUBLIC NOTICE REQUIREMENT AND DELAYED EFFECTIVE DATE

Because these amendments implement a statutory requirement, confer additional rights and benefits upon the importing community, and conform the regulations to changes made by the act, notice and public procedure pursuant to 5 U.S.C. 553(b)(B), are unnecessary and contrary to the public interest. Further, for the same reasons, good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553(d)(3).

COMMENTS

For the reasons set forth in the previous paragraph, these amendments are being published as a final rule. However, recognizing the need to assess the effects of these amendments, Customs will evaluate their impact as soon as sufficient experience has been acquired, with

a view to making appropriate revisions. To assist in the evaluation, written comments are invited on their impact. Consideration will be given to any comments to determine whether it would be appropriate to make further amendments. Comments should be addressed to the Commissioner of Customs, attention: Regulations and Research Division, room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours, at the Regulations and Research Division.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Parts 10, 19, 113, 144, 153, 159, 174, 175, and 177, Customs Regulations (19 CFR pts. 10, 19, 113, 144, 153, 159, 174, 175, 177), are amended as set forth below.

R. E. CHASEN,
Commissioner of Customs.

Approved: October 7, 1980.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.171(a) is amended by adding, "as amended" after "the Trade Act of 1974" wherever it appears.

2. Section 10.171(b) is amended by adding "or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties" after "customs union" in the second sentence.

3. Section 10.176 is amended in the following manner: Paragraph (a) is amended to read as follows:

10.176 Country-of-origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries.*—Merchandise which is (1) the growth, product, manufacture, or assembly of (i) a beneficiary developing

country or (ii) any two or more countries which are members of the same association of countries and (2) imported directly from such beneficiary developing country or member countries, may qualify for duty-free entry under the Generalized System of Preferences (GSP). However, duty-free entry under GSP may be accorded only if (1) the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), plus (2) the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the United States.

Paragraph (b) is deleted and the paragraph marked "Reserved".

Paragraph (c) is amended by adding ", as amended" after "the Trade Act of 1974".

(R.S. 251, as amended sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL
OF MERCHANDISE THEREIN

1. Section 19.15(g)(1) is amended by adding the phrase ", except for distilled spirits which may be withdrawn under the provisions of section 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate export," after the phrase "for the sole purpose of immediate export" in the first sentence and by deleting the phrase "at the exterior port" in the third and fourth sentences.

2. Section 19.15(g)(2) is amended by deleting the phrase "section 5521 of the Internal Revenue Code, as amended (26 U.S.C. 5521), and" in the first sentence.

(R.S. 251, as amended, sec. 624. 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 113—CUSTOMS BONDS

Section 113.14 is amended by deleting paragraph (q) and marking the paragraph "Reserved".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The heading to section 144.15(b) is amended by substituting "311, Tariff Act of 1930, as amended" for "5521 of the Internal Revenue Code".

2. Section 144.15(b)(1) is amended by deleting the phrase "section 5521 of the Internal Revenue Code, as amended (26 U.S.C. 5521), and".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 153—ANTIDUMPING

Chapter I of title 19, Code of Federal Regulations, is amended by deleting part 153.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 159—LIQUIDATION OF DUTIES

I. Section 159.4(a) is amended by substituting the phrase "distilled spirits" for "alcoholic beverages", by deleting the parenthetical phrase "(or wine gallons if below proof)" in the first sentence and by adding a new sentence at the end of the section to read as follows:

159.4 Alcoholic beverages.

(a) *Quantities subject to duties.* * * * Customs duties and internal revenue taxes on alcoholic beverages other than items 167.20 and 167.90, Tariff Schedules of the United States (19 U.S.C. 1202), and distilled spirits provided for in schedule 1, part 12, Tariff Schedules of the United States, shall be collected only on the number of wine gallons and fractional parts thereof, entered or withdrawn for consumption.

2. Section 159.4(b)(1) is amended by adding the phrase "utilizing the proof gallon method of computation" at the end of the section.

3. Section 159.41 is amended to read as follows:

159.41 Antidumping duties.

Antidumping duties shall be assessed in accordance with part 353, chapter III, of this title.

4. Section 159.47 is amended to read as follows:

159.47 Countervailing duties.

Countervailing duties shall be assessed in accordance with part 355, chapter III, of this title.

5. A new section 159.58 is added to read as follows:

159.68 Dumping and countervailing duties; Action by district director.

(a) *Antidumping matters.*—Upon receipt of notification from the Commissioner, each district director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Antidumping Determination," "Notice of Final Affirmative Antidumping Determination" or "Notice

of Violation of Agreement" as provided by part 353, chapter III, of this title. Each district director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated antidumping duty.

(b) *Countervailing matters.*—Upon receipt of notification from the Commissioner, each district director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Countervailing Duty Determination," "Notice of Final Affirmative Countervailing Duty Determination" or "Notice of Violation of Agreement," as provided by part 355, chapter III, of this title. Each district director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated countervailing duty.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 174—PROTESTS

1. Section 174.12(a) is amended to read as follows:

174.12 Filing of protests.

(a) *By whom filed.*—Protests may be filed by:

- (1) the importer or consignee shown on the entry papers, or their sureties;
- (2) any person paying any charge or exaction;
- (3) any person seeking entry or delivery;
- (4) any person filing a claim for drawback; or
- (5) any authorized agent of any of the persons described in paragraphs (1) through (4), subject to the provisions of section 174.3.

2. Section 174.12(e) is amended by deleting the word "or" at the end of paragraph (1), by substituting a semicolon for the period at the end of paragraph (2) followed by the word "or" and by adding a new paragraph (3) to read as follows:

174.12 Filing of protests.

* * * * *

(e) *Time of filing.*

* * * * *

- (3) The date of mailing of notice of demand for payment against a bond in the case of a surety which has an unsatisfied legal claim under a bond written by the surety.

3. Section 174.13(a) is amended by deleting the word "and" after the semicolon in paragraph (6), by substituting a semicolon for the period at the end of paragraph (7) followed by the word "and" and by adding a new paragraph (8) to read as follows:

174.13 Contents of protest.

(a) *Contents, in general.*

* * * * *

(8) If another party has not filed a timely protest, the surety's protest shall certify that the protest is not being filed collusively to extend another authorized person's time to protest.

4. Section 174.30(a) is amended by adding the following sentence between the first and second sentences:

174.30 Notice of denial of protest.

(a) *Issuance of notice.* * * * The notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 175—PETITIONS BY AMERICAN MANUFACTURERS, PRODUCER,-
AND WHOLESALERS

1. The heading to part 175 is amended to read as follows:

PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

2. Section 175.0 is amended by substituting "domestic interested parties" for "American manufacturers, producers, and wholesalers".

3. The heading to subpart A of part 175 is amended to read as follows:

Subpart A—Request for classification, appraised value and rate of duty

4. Section 175.1 is amended by adding ", appraised value" after "classification".

5. Sections 175.2(a), 175.12(a), 175.21(a), and 175.21(b) are amended by substituting the phrase "a domestic interested party" for "an American manufacturer, producer, or wholesaler" wherever it appears.

6. Section 175.2(b) is amended by adding ", appraised value" after "classification".

7. A new section 175.3 is added to read as follows:

175.3 Domestic interested party.

Domestic interested party, when used in this Part, means:

(a) A manufacturer, producer, or wholesaler in the United States of a like product;

(b) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; or

(c) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

8. Section 175.11(b) is amended by substituting "domestic interested parties" for "American manufacturers, producers, or wholesalers."

9. A new subpart D is added to part 175 to read as follows:

Subpart D—Procedure following court decision

175.31 Publication of notice of court decision.

Notice of a decision of the Customs Court or of the Court of Customs and Patent Appeals which sustains, in whole or in part, a cause of action before the court under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be published by the Commissioner of Customs in the Federal Register within 10 days from the date of issuance of the court decision.

(R.S. 215, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 177—ADMINISTRATIVE RULINGS

The fourth sentence of section 177.0 is amended by (1) deleting "Part 153 (relating to enforcement of the Antidumping Act, 1921, as amended), Part 159 (insofar as it relates to countervailing duties)," and (2) substituting "Part 175 (relating to petitions filed by domestic interested parties pursuant to sec. 516, Tariff Act of 1930, as amended)" for "Part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to sec. 516 of the Tariff Act of 1930, as amended)".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

(T.D. 80-272)

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 7, 1980.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director; amount
Pan American World Airways, Inc. (A NY Corp.), Pan American Bldg., New York, NY; The Travelers Indemnity Co. (PB 7/17/75) D 9/19/80 ¹	July 17, 1980	Sept. 19, 1980	New York, NY \$300,000
Republic Airlines West, Inc., 7500 Airline Dr., Minneapolis, MN; Safeco Ins. Co. of America (PB 7/1/79) D 9/30/80 ²	Oct. 1, 1980	Oct. 1, 1980	Minneapolis, MN \$100,000
Singapore Airlines Ltd., San Francisco Int'l Airport, San Francisco, CA; The Continental Ins. Co.	June 15, 1980	Aug. 28, 1980	San Francisco, CA \$100,000

¹ Principal is Pan American World Airways, Inc. (A New York corporation) and its w/o/s Pantique, Inc. (A Delaware corporation)

² Principal is Republic Airlines Inc.

Note.—The foregoing principals have been designated as carriers of bonded merchandise.

BON-3-01

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 80-273)

[Bond]

Approval of a carrier's bond, Customs form 3587

A bond of a carrier for the transportation of bonded merchandise has been approved as shown below. The approval of the bond is temporary until December 30, 1980.

Dated: November 10, 1980.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Equipment Supplies, Inc., P.O. Box 396, Argo, Ill.; motor carrier; Hartford Accident & Indemnity Co.	Sept. 30, 1980	Oct. 7, 1980	Chicago, Ill. \$35,000

BON—3—03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 80-274)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:

October 27-31, 1980..... \$0. 0167

People's Republic of China yuan:

October 27, 1980..... \$0. 671366

October 28-31, 1980..... . 666045

Hong Kong dollar:

October 27, 1980..... \$0. 197316

October 28, 1980..... . 197219

October 29, 1980..... . 197394

October 30, 1980..... . 197550

October 31, 1980..... . 197511

Iran rial:

October 27-31, 1980..... Not
available

Philippines peso:	
October 27-31, 1980	\$0. 1338
Singapore dollar:	
October 27, 1980	\$0. 479042
October 28, 1980	. 478354
October 29, 1980	. 479386
October 30, 1980	. 479731
October 31, 1980	. 479157
Thailand baht (tical):	
October 27-31, 1980	\$0. 0488
Venezuela bolivar:	
October 27-31, 1980	\$0. 2328
(LIQ-3-01 O:C:E)	
Dated: October 31, 1980.	

NANCY I. BROWN,
Chief,
Customs Information Exchange.

(T.D. 80-275)

Foreign Currencies—Variances from Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80-249 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Sri Lanka rupee:	
October 27-31, 1980	\$0. 058140
Austria schilling:	
October 31, 1980	\$0. 074047
German deutsche mark:	
October 31, 1980	\$0. 524714
Ireland pound:	
October 31, 1980	\$1. 9650
(LIQ-3-01 O:C:E)	

Dated October 31, 1980.

NANCY I. BROWN,
Chief,
Customs Information Exchange.

ERRATUM

In CUSTOMS BULLETIN volume 14, No. 45, dated November 5, 1980, in T.D. 80-256 the following rate was mistakenly omitted:

Sri Lanka rupee:

October 10, 1980----- \$0. 058480

U.S. Customs Service

General Notice

(TMK-2-RRUEE)

Notice of application for recordation of trade name American Machine & Tool Co., Inc.

Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name American Machine & Tool Co., Inc., a corporation organized under the laws of the State of Pennsylvania, located at Fourth Avenue and Spring Street, Royersford, Pa. 19468.

The application states that the trade name is used in connection with power tools, manufactured in the United States. The application states further that no foreign firm is authorized to use the trade name sought to be recorded. Appropriate accompanying papers were submitted with the application.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person, in opposition to the recordation of this trade name. Any such submission should be addressed to the Commissioner of Customs, Washington, D.C. 20229, in time to be received not later than 30 days from the date of publication of this notice in the Federal Register.

Notice of the action taken on the application for recordation of the trade name will be published in the Federal Register.

Dated: November 6, 1980.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1255)

No. 80-27 NORMAN G. JENSEN, INC., A/C CALHOUN COLLECTOR'S
INC. v. UNITED STATES,

1. CLASSIFICATION—23 CARAT (K) GOLD STAMPS

Customs Court opinion is adopted. Judgment holding that embossed 23K gold stamps issued by private party are neither postage stamps nor essentially printed matter within the TSUS is *affirmed*.

U.S. Court of Customs and Patent Appeals, November 6, 1980

Appeal from U.S. Customs Court, C.D. 4846

[Affirmed.]

Joseph Donohue, Donohue and Donohue, attorney for appellant.

Alice Daniel, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation, *Madeline B. Kuflik*, Commercial Litigation Branch, Civil Division, Department of Justice, attorneys for appellee.

[Oral argument on October 7, 1980 by *Joseph Donohue* for appellant and *Madeline B. Kuflik* for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER and NIES, *Associate Judges*.

RICH, Judge.

This appeal is from the judgment of the U.S. Customs Court in *Norman G. Jensen, Inc., a/c Calhoun's Collectors Society, Inc. v. United*

States, — Cust. Ct. —, C.D. 4846 (1980), sustaining the original classification of the imported merchandise, 23 carat (K) gold stamps. We affirm.

THE IMPORTED MERCHANDISE

The merchandise consists of so-called Staffa stamps imported from Scotland in 1975. They are made to somewhat resemble postage stamps and have adhesive backings, but differ from ordinary government-issue stamps in being made from thin, 1½-by-2 inch rectangles of 23K gold. Embossed on the stamp face is the State seal of one of the Original Thirteen American Colonies. The name of the selected colony is inscribed immediately below. At the top left-hand corner appear the words, Staffa Scotland. In opposite corners at the bottom are the phrases "23K Gold" and "Postage 1b6."

Staffa, Scotland, is a small, uninhabited, privately owned island about 8 nautical miles off the coast of Scotland. A ferry, operated by Staffa Marine Ltd., shuttles tourists to and fro. While on board, the tourists may buy Staffa stamps for 6 pounds sterling. A letter or card with the Staffa stamp affixed may be deposited in a private receptacle on the island designated for the collection of such letters or cards. Staffa Marine then collects the letters or cards daily and takes them to the mainland where a British postage stamp is then affixed to each letter or card prior to its being deposited in an official British Post Office for transmission to the designated destination.

STATUTORY PROVISIONS

The merchandise was classified by the Customs Service under item 656.10 of the Tariff Schedules of the United States (TSUS):

Articles of precious metal, including
rolled precious metal:

* * *	Of platinum, including rolled platinum.....	* * *
656.10	Of gold, including rolled gold.....	20% ad val.
* * *	Of silver, including rolled silver.....	* * *

Appellant's principal claim was for classification as free under the following item:

270.40	Postage and revenue stamps, canceled or not canceled, and government-stamped envelopes and postal cards bearing no printing other than the official imprint thereon.....	Free
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or alternatively either under item 274.70:

Photographs, engravings, etchings, lithographs, and woodcuts, and pictorial matter produced by relief or stencil printing process, all the foregoing, whether bound or not bound, and not specially provided for:

Printed over 20 years at time of importation-----

* * *

Printed not over 20 years at time of importation:

*	*	*	*	*	*	*
274.70	Other-----					4% ad val.

or item 274.90:

Printed matter not specially provided for:

* * *

Suitable for use in the production of such books as would themselves be free of duty-----

* * *

* * *

Other:

*

*

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Other:

Susceptible of authorship--

* * *

274.90

Other-----

7.5% ad val.

CUSTOMS COURT

The Customs Court noted that both sides produced abundant testimony on the meaning of postage stamps. The common meaning was held to be determinative, not the philatelic one, since Congress did not evidence any specific meaning. The following two requirements for a postage stamp were gleaned from lexicographic sources: (1) issuance or specific authorization by a government; and (2) representation of a prepaid postal charge. Since Staffa stamps were issued by a private party and not authorized by the British Government, they were held not to be postage stamps under item 274.40.

As to the alternative claims under item 274.70 and item 274.90, the court held that the embossed stamps were printed material but not printed matter within part 5 of schedule 2, TSUS. While Staffa stamps were found to be printed, since embossing is a form of printing, the court noted that they must also consist essentially of pictorial or textual matter to fall within either item 274.70 or item 274.90.

Appellee was held to have failed to produce sufficient evidence to rebut Customs' determination. An advertising brochure, said to be the only relevant evidence, was declared to stress not only the value of the

goods as collectibles but their definite monetary value as well, because they are made of pure 23K gold instead of paper. Since the desirability of the stamps was held to be derived equally, if not principally, from the intrinsic worth of the gold, the court concluded that the essential character of the Staffa stamps was not imparted by the textual or pictorial matter on the stamps and, therefore, that the stamps were not printed matter.

OPINION

[1] We find no error in the Customs Court's decision. The law was properly applied to the facts. Therefore, we adopt the careful and detailed reasoning of the Customs Court's opinion as our own.

The judgment of the Customs Court is *affirmed*.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza

New York, N. Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decision

(C.D. 4878)

J. E. MAMIYE & SONS, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Tote bags

Court No. 78-6-01086

Importations of certain tote bags made of textile material were classified under item 389.60, TSUS (or as renumbered item 389.62 pursuant to Executive Order 11974), as modified by T.D. 68-9, held

properly subject to classification under item 706.24, TSUS, as modified by T.D. 68-9.

"Handbags," as provided for in item 706.24, TSUS, is an *eo nomine* provision. This provision prevails over the basket provision for articles n.s.p.f. of textile materials both as to specificity and by virtue of headnote 1 of schedule 3, part 7, subpart B which excludes articles of textiles provided for elsewhere.

Use may be considered in determining the identity of an *eo nomine* designation. *United States v. Quon Quon Company*, 46 CCPA 70, C.A.D. 699 (1959).

The record establishes the involved tote bags are used primarily by women as second handbags to carry items which do not ordinarily fit within a handbag. Such testimony is sufficient to establish the use of a tote bag to be similar to a handbag and as such removes it from the category of a shopping bag which would prevent classification under 706.24, *supra*. See Headnote 2(b) of schedule 7, part 1, subpart D.

[Judgment for plaintiff.]

(Decided October 31, 1980)

Mandel & Grunfeld (Steven P. Florsheim and Robert B. Silverman at the trial and on the briefs) for the plaintiff.

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Jerry P. Wiskin* and *Madeline B. Kuflik* at the trial; *Jerry P. Wiskin* on the brief), for the defendant.

FORD, Judge: This action presents for determination the proper classification of certain tote bags which were classified for duty purposes under item 389.60 (or item 389.62)¹ of the Tariff Schedules of the United States, as modified by T.D. 68-9, and assessed with duty at 25 cents per pound plus 15 per centum ad valorem.

Plaintiff contends said tote bags are properly dutiable at 20 per centum ad valorem as either handbags or, alternatively, as luggage of textile materials as provided for under item 706.24, TSUS, as modified by T.D. 68-9.

The pertinent statutory provisions read as follows:

Tariff Schedules of the United States:

Schedule 3, part 7, subpart B:

Subpart B headnote:

1. This subpart covers articles, of textile materials, not covered elsewhere in the tariff schedules.

* * * * *

¹ Item 389.60, TSUS, was renumbered item 389.62 by Executive Order 11974, dated Feb. 25, 1977.

Articles not specially provided for, of
textile materials:

* * * * *

Other articles, not ornamented:

* * * * *

Of man-made fibers:

* * * * *

389.60

Other----- 25¢ per lb. + 15%
ad val.

Schedule 7, part 1, subpart D:

Subpart D headnotes:

* * * * *

2. For the purposes of the tariff
schedules—

(a) the term "luggage"
covers—

(i) travel goods, such
as trunks, hand trunks,
lockers, valises, satchels,
suitcases, wardrobe
cases, overnight bags,
pullman bags, gladstone
bags, traveling bags,
knapsacks, kitbags,
haversacks, duffle bags,
and like articles de-
signed to contain cloth-
ing or other personal
effects during travel;
and

(ii) brief cases, port-
folios, school bags, pho-
tographic equipment
bags, golf bags, camera
cases, binocular cases,
gun cases, occupational
luggage cases (physi-
cians', sample, etc.) and
like containers and
cases designed to be
carried with the person,
except handbags as de-
fined herein;

(b) the term "handbags" covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags;

Luggage and handbags * * *:

Of textile materials (except yarns, of paper), whether or not ornamented:

Wholly or in part of braid-----

Other:

Of vegetable fibers and not of pile or tufted construction:

Other----- 20% ad val.

706. 24

The record consists of the testimony of 8 witnesses called on behalf of plaintiff and 10 called on behalf of defendant. Fifty-three exhibits were received in evidence, 27 for plaintiff and 26 for defendant.

Mr. Jack Mamiye, president of plaintiff corporation, testified that he had been importing and selling handbags for approximately 30 years.

The line of merchandise handled by plaintiff consists of shoulder bags, tote bags and evening bags, which cover approximately 2,500 to 3,000 styles of which there are 1,000 styles of tote bags.

The imported tote bags consist of many variations in sizes, colors, and materials. Some of the tote bags had open tops, while others had zippers or snap closures, and some had inside or outside pockets. Mr. Mamiye testified that the letter designations on the invoices of the representative exhibits 1 to 5, indicated the various business concerns for whom they were imported. For example, "LG" represents Literary Guild, and "DB" represents Doubleday Book Club, etc.

Merchandise, such as exhibits 1 to 5, was sold to various premium customers and other accounts without the graphics. The latter tote bag were sold to handbag departments of department stores, notion departments, and cosmetic departments. The imported merchandise is commonly referred to as handbags, tote bags, shoulder bags, and cosmetic bags, as well as fashion handbags, fashion totes, and shoulder totes.

The witness testified that a tote bag with or without a zipper closure is still a tote bag or a handbag. The absence or presence of a closure is due solely to the customer's desire. The witness testified exhibits 1 to 5 were premium items, and he could only guess that they were probably sold like a gift with a purchase, I guess. I don't know.

The second witness called on behalf of plaintiff was Lou Nathan, an instructor at the New York Fashion Institute of Technology, where he teaches courses in handbag design and pattern making. Mr. Nathan is also a consultant to the handbag industry, and his duties involve supervision of handbag design, consulting on manufacturing operations and quality control.

The witness has been in the handbag business since 1930, having owned and operated a number of handbag manufacturing companies, as well as being employed by various handbag manufacturers. Mr. Nathan has been involved in every facet of handbag design and manufacture and has personally designed and manufactured tote bags throughout his years in the handbag industry. He has written trade publication articles on the subject of handbags, as well as a textbook on handbag design and technology. He was familiar with the use of handbags in the United States and the manner in which handbags were sold at the retail level.

Mr. Nathan defined a handbag as something that women wear to carry their personal possessions while they are away from home. Based upon his experience, the witness testified that handbags fall into various price categories, such as, low, medium, or high. Handbags are also categorized by type, such as, frame bags, shoulder bags, underarm bags, clutch bags, box bags, evening bags, tote bags, travel bags, and hobo bags. In the opinion of the witness, a tote bag is a handbag utilized as an auxiliary handbag and is used to carry various objects which do not fit into a woman's regular handbag. It is, in effect, an auxiliary handbag. While a tote bag may be utilized for carrying purchases, such use is secondary because it is, in effect, a second handbag. By the same token, the witness testified that women may carry purchases in their regular handbag. In the opinion of Mr. Nathan tote bags are not sturdy versions of shopping bags and are not intended or designed to imitate shopping bags.

According to witness Nathan the concept of fashion plays an important role with respect to handbags, including tote bags. Fashion refers to color combinations, shape, and the manner in which the bag is carried, such as, hand, arm, or shoulder. From the standpoint of construction and use, exhibits 1 to 5 are similar to pocketbooks, purses, shoulder bags, and clutch bags.

On cross-examination, Mr. Nathan stated that women use handbags for carrying valuables and generally desire some form of security

device in their primary handbag. The witness defined a shopping bag as a large paper or plastic bag, given away in a retail store. Such bags are used for carrying bulky purchases and are not used by women as a secondary handbag.

Mr. Nathan testified that he attended trade shows and that tote bags are displayed by handbag manufacturers as part of their collection.

Next called on behalf of plaintiff was Mr. Sharif El Fouly, manufacturer and designer of handbags, operating under the name of Sharif's Design, Ltd. The witness also teaches courses in handbag design, construction and pattern making at the Parsons Fashion Center, which is connected with the New School in New York City. After his arrival in the United States, he was employed by a handbag manufacturer from 1972 to 1978. The duties of this well-informed witness included design, pattern making, quality control, buying of raw materials, as well as being in contact with retail buyers.

Prior to immigrating to the United States, the witness was involved in his family's handbag and luggage manufacturing business in Egypt. He obtained a degree in design from Offenbach in Germany and worked as a designer in the handbag industry in Europe. Witness El Fouly taught courses in handbag design in Lebanon, Jordan, and Morocco. He presently holds five foreign patents in handbag design. Mr. El Fouly regularly attends handbag trade shows and visits retail handbag establishments to observe how handbags are sold and merchandised. He has observed the uses of handbags throughout the United States since his arrival in this country in 1970. According to the witness, the use of a handbag does not vary geographically. Handbags are used mostly by women to carry their belongings, and it is not uncommon for women to carry two handbags at one time.

The witness has personally designed, manufactured, and sold tote bags, which come in all sizes, with and without closures. According to the witness some tote bags have inside or outside pockets and some do not. Such articles are made from various materials including leather, fabric, and plastic. Tote bags, in his opinion, are handbags and are usually sold and displayed in the handbag department of department stores. Larger tote bags are sold in the luggage department. Exhibits 1 to 5 are commonly referred to as tote bags and are not referred to as shopping bags. The tote bags, such as exhibits 1 to 5, are fashion bags because the colors, styles, designs, and proportions are geared to current fashions.

The witness was of the opinion that exhibits 1 to 5 are similar to pocketbooks, clutch bags, purses, and shoulder bags from the standpoint of construction and use.

On redirect examination witness El Fouly stated that tote bags can be used for shopping because they are usually large. However, the use

of a handbag for carrying purchases does not change the identity from a handbag to a shopping bag since most large handbags can be used for shopping.

Deborah Patterson was then called on behalf of plaintiff. She testified that she had used tote bags similar to exhibits 1 to 5 for approximately 5 or 6 years. Such bags were used to carry her belongings, such as keys, money, and a change of clothes. On occasion she carried a second handbag in addition to her tote bag. The witness obtained a tote bag identical to exhibit 8 with the purchase of cosmetics in Bloomingdale, where it was placed in a paper bag and stapled shut. The witness further stated the cosmetics were not placed in the tote bag.

Michael Dimin, a wholesaler and distributor of plain and printed polyethylene shopping bags, was called by plaintiff. He defined a shopping bag as * * * a bag whose primary function would be the transportation of goods from a point of sale to a point of use. Shopping bags are sold or given away by retailers and are used by both men and women. According to witness Dimin shopping bags fall under the category of packaging material, and, in his opinion, exhibits 1 to 5 are not shopping bags and are not competitive with his shopping bags.

Annemarie Androsiglio, a fashion coordinator for a women's wear manufacturer, was called on behalf of plaintiff and testified that she used a tote bag to carry her personal effects, such as, credit cards, keys wallet, newspaper, and a folded shopping bag. She stated that while she placed purchases in her tote bag along with her personal effects, she did not use a tote bag to carry purchases only. She also carried on occasion an additional handbag along with her tote bag. In her opinion, a shopping bag is one used to carry merchandise home from a store and, once it served this function, she considered it to be disposable item.

Rose Ann Avallone, called on behalf of plaintiff, testified that she had obtained exhibit 22 from the Doubleday Book Club. She stated that she used exhibit 22 while going to and from work, to carry personal effects such as an umbrella, a makeup case, hairbrush, a book or magazine, and sometimes her lunch. On occasion she has used exhibit 22 to carry a small purchase, but she has never used a tote bag for shopping or carrying only purchases. The witness further stated that she used a second handbag while going to and from work so she could carry all the personal effects that would not fit into one handbag. Witness Avallone stated that for leisure activities she used a different tote bag, in which she put all her personal effects, including keys, wallet, and money, and ordinarily did not carry another pocketbook on those occasions. According to the witness a shopping bag is primarily an inexpensive paper or plastic bag used to carry purchases home from a store.

Frieda Koren, an owner of a discount retail store in New York City, was called by plaintiff. Approximately 80 percent of her business consists of the sale of handbags and luggage. Witness Koren, prior to coming to the United States, designed handbags in her native country, Israel. She defined a handbag as a bag which is fashionable and stylish, that is carried by women, and is made of a nice material and looks nice. According to witness Koren exhibits 1 to 5 are handbags, and she sold bags that are identical to exhibits 1, 3, and 5 in her store. She further stated that she had sold exhibit 5 with and without the "LG" logo. The witness stated that she recognized no distinction between handbags and tote bags and that in transactions with retail customers and suppliers, exhibits 1 to 5 are commonly referred to as handbags or tote bags. Witness Koren uses tote bags as second handbags to carry personal effects such as money, lunch, and keys. In her store she has sold paper and plastic shopping bags to customers desiring to carry out their purchases in a bag.

Defendant called Ann Sanchak as its first witness. She testified she did not own a bag similar to exhibits 1 to 5. Defendant offered, and it was received in evidence, exhibit N, which is the shopping bag belonging to Miss Sanchak, who testified she used said exhibit regularly for shopping. The witness further stated that she carries a handbag in addition to exhibit N, and that her valuables are carried in the handbag. When purchasing a handbag, she always selects one which has a zipper and compartments or some secure closure. In her opinion exhibits 1 to 5 are shopping bags and not handbags.

On cross-examination the witness conceded that the bag depicted in exhibit 13 is a handbag even though it had no closure.

Helen Vogel, an employee of the Lenox Hill Senior Center, was called by defendant and testified that she carries a tote bag to work daily. Her tote bag is similar to exhibit 1, only a little larger. The witness testified that she used a handbag to carry her valuables such as keys and papers and her tote bag for shopping and carrying personal effects such as books, boots, and an umbrella, and for carrying personal articles to the beach. The witness did not consider a tote bag to be a handbag because of a lack of security and would call her tote bag a shopping bag. Prior to owning a tote bag she used a shopping bag for carrying personal articles and shopping. Exhibits 1 to 5, according to witness Vogel, are shopping bags since they are open. On one occasion her tote bag was picked, and she lost her wallet and keys.

Defendant called Jo Harris, an import specialist with the Customs Service in Miami, Fla. The witness testified that she is familiar with exhibits 1 to 5 and owns one similar to such exhibits, which she produced. It was received in evidence as exhibit O. The witness testified she obtained exhibit O as a gift when she joined the Doubleday Book Club. She utilizes exhibit O on weekdays, going to work, when she

places in it her newspaper, a large, bulky makeup kit, sometimes fruit or something to eat, reading material, and sometimes sewing or knitting. In addition, occasionally she may place it in a pair of shorts and slippers. Witness Harris then testified that these are not the types of articles she would carry in a handbag. In her handbag she carries items such as a wallet, keys, and other valuables. She considers her tote bag, exhibit O, as well as exhibits 1 to 5, to be shopping bags or tote bags. The witness further testified that her position in Customs did not include merchandise such as handbags or shopping bags.

Next called on behalf of defendant was Irwin Harold Gold, who is employed by the U.S. Customs Service as an import specialist in Chicago. The witness testified that he recently received an assignment to visit department stores in the Chicago area to make observations as to the sale of tote bags. He visited four department stores in that area and testified that in Wieboldt's Department Store articles similar to exhibit 1, but constructed similar to exhibit 5, were found in the cosmetics department. In Marshall Field's Department Store he observed an article similar to exhibit 3 in the notions department and on a counter across from the handbag department. In Montgomery Ward's Department Store he observed articles similar to exhibits 1 through 5 in between the notions and cosmetics department, and the stationery department. In his visits to Carson's Department Store and Sears Department Store, he observed no tote bags. However, in Marshall Field's Department Store in the Oak Brook Shopping Center, he observed a bag similar to exhibits 1 through 5 in the beach-wear department. He also visited Horder's Stationery Store and observed articles similar to exhibits 1 to 5 displayed on a rack.

The witness further testified that he visited Kroch's and Brentano's bookshop, as well as the Dalton's bookstore, and observed articles similar to exhibits 1 through 5 displayed on a stand next to the cashier. The witness also visited five handbag shops and observed a tote bag made of burlap sack in only one of the stores.

Warner J. Heuman, chairman of the board of Uniflex Inc., manufacturers of plastic shopping bags, was called on behalf of defendant. The witness testified that he has observed articles such as exhibits 1 to 5 displayed at trade shows in which Uniflex merchandise was also displayed. The witness was of the opinion that a tote bag is one which is used to carry merchandise from one place to another, basically the same as a shopping bag. In his opinion, shopping bags and tote bags, such as exhibits 1 to 5, served the same purpose and were in direct competition with his shopping bags.

Mr. Heuman admitted that his corporation never designed, sold, or marketed tote bags such as those in issue and that his bags are

constructed by a heat sealing or gluing process and are not sewn or made of a fabric material. He was of the opinion that a tote bag is a shopping bag and not a handbag. Plastic shopping bags, such as the merchandise manufactured by his company, fall into the category of flexible plastic packaging. Such bags are not designed as fashion accessories to clothing.

Edward J. Berrigan was called to testify on behalf of defendant. Witness Berrigan is a detective with the New York City Police Department, assigned to the pickpocket and confidence squad. The witness was of the opinion that exhibits 1 through 5 are not secure from pickpockets since they are open. Detective Berrigan further testified that he had encountered cases where tote bags such as exhibits 1 through 5 had been the subject of pickpockets in which wallets and cosmetic cases were removed from the tote bags by thieves.

Samuel Roger Schoenfeld, a handbag designer and owner of a handbag marketing company, testified on behalf of defendant that he has been involved in the handbag industry since 1951. In the opinion of witness Schoenfeld, exhibits 2 to 5 are shopping bags and exhibit 1 is a handbag. The witness' sole distinction between a shopping bag and a handbag is that the latter must be secure. The witness testified that exhibits 2 to 5 are used along with a handbag to carry things that a woman might need, and that it is becoming more common for a woman to carry two handbags. According to the witness a handbag is one that is carried in the hand, such as a tote bag, either secured or unsecured, or a pocketbook.

Exhibit S was identified by Mr. Schoenfeld as a product he sells as a shopping bag. He was of the opinion that all tote bags are not handbags, but a tote bag with security is a handbag.

Witness Schoenfeld sold his merchandise to the handbag departments and luggage departments of department stores. It was the opinion of the witness that exhibit 1 was a handbag because of the presence of a detachable purse. Mr. Schoenfeld further stated that exhibits 2 to 5 would not be considered shoulder bags or clutch bags in the trade.

Defendant called Roger Gerber, a manufacturer of cut and sewn products, whose company manufactures products similar to exhibits 1 to 5. The witness testified that his company displays its goods at trade shows, but not at handbag shows. In the experience of the witness in attempting to sell his products to department stores, he was directed to the notions and stationery departments. He characterized the tote bags manufactured by his company, exhibits T, U, and V, as primarily used for carrying purchased merchandise home from the store.

Nancy McTiernan, an import specialist employed by the Customs Service in New York, testified that bags similar to exhibit 2 are dis-

played in the cosmetics department of Bloomingdales. She further testified that she did not see exhibit 2 in the handbag department of Bloomingdales.

Based upon the record it is established the involved merchandise, represented by exhibits 1-5, consists of tote bags, made of a textile material. Said items were given away as premiums or sold. The provision claimed by plaintiff, handbags, is an *eo nomine* provision which if established would prevail over the provision under which classification was made. This is so since item 706.24 *supra*, is more specific. Additionally, headnote 1 of schedule 3, part 7, subpart B, specifically excludes articles of textiles provided for elsewhere.

The primary issue presented is whether the imported tote bags are handbags as claimed or whether they are excluded from classification under item 706.24, *supra*, by virtue of being shopping bags in accordance with headnote 2(b) of schedule 7, part 1, subpart D. Alternatively, plaintiff claims the tote bags to be luggage under said item 706.24, *supra*. As indicated, *supra*, the provision for handbags is an *eo nomine* provision. An *eo nomine* designation is one which describes a commodity by a specific name, usually one well known to commerce. *United States v. Paul M. W. Bruckmann*, 65 CCPA 90, C.A.D. 1211, 582 F. 2d 622 (1978). Ordinarily use is not a criteria in determining whether merchandise is embraced within an *eo nomine* provision. However, use may be considered in determining the identity of an *eo nomine* designation. In *United States v. Quon Quon Company*, 46 CCPA 70, C.A.D. 699 (1959), the court, in determining whether rattancore articles were baskets or parts of furniture, made the following observation:

While unhesitatingly granting the truth of the contention that baskets in the tariff act provides for baskets *eo nomine*, this does not help us in the least to decide whether the imported articles are baskets. We are not so trusting of our own notions of what things are as to be willing to ignore the purpose for which they were designed and made and the use to which they were actually put. *Of all things most likely to help in the determination of the identity of a manufactured article, beyond the appearance factors of size, shape, construction and the like, use is of paramount importance.* To hold otherwise would logically require the trial court to rule out evidence of what things actually are every time the collector thinks an article, as he sees it, is specifically named in the tariff act. [Italic added, p. 73.]

Following this principle the record establishes that the involved tote bags are utilized by women as second handbags to carry items which do not ordinarily fit within a handbag. Defendant's witnesses, Schoenfeld, Harris, and Vogel confirmed the use of the tote bag to carry items which do not ordinarily fit within a handbag. Likewise plaintiff's witnesses, Patterson, Nathan, El Fouly, Androsiglio, Avallone, and

Koren, testified to the same effect. Accordingly, it is apparent that, while a tote bag may be used to carry purchases, 9 of the 18 witnesses who testified indicated it is used for the convenience of carrying those items which do not fit within a handbag. Such testimony is sufficient to establish the use of a tote bag to be similar to a handbag and as such removes it from the category of a shopping bag which would prevent classification under item 706.24, *supra*. See headnote 2(b) of schedule 7, part 1, subpart D.

The court is aware of the language utilized in *Adolco Trading Co. v. United States*, 71 Cust. Ct. 145, D.C. 4487 (1973) which stated that the articles enumerated by the TSUS as handbags have a closure to prevent valuable and small articles from falling out or from being stolen.² The court therein stated that handbags are used to carry money, licenses, credit cards, cosmetics, and other personal items. According to Detective Edward J. Berrigan, called on behalf of defendant, wallets and cosmetic cases are removed from tote bags such as exhibits 1 to 5 by pickpockets. These items are ordinarily found in a handbag. Defendant's witness Vogel additionally testified she had been a victim of a pickpocket, having lost a wallet from a tote bag. Whether or not the language with respect to a closure is dicta, the U.S. International Trade Commission in its publication, "Summary of Trade and Tariff Information," USITC Publication 841, Control No. 7-1-1, November 1977, made the following observation with respect to *Adolco*:

A number of problems have arisen concerning the proper classification of imports of luggage for duty purposes. In C.D. 4487, November 29, 1973, the U.S. Customs Court ruled that, for Customs purposes, shopping bags are not classifiable as like articles designed to contain clothing or other personal effects during travel or like containers and cases designed to be carried with the person, except handbags as defined herein (in the TSUS). The court established certain dicta which now guide classification decisions. Especially important was the court's emphasis on a closure of some type for luggage which provides security for items contained therein and the use to which the article is put.

However, certain types of totes do not have closures and often serve as a *second bag* for carrying articles in addition to a handbag or sometimes serve as a substitute for a handbag. Customs classifies a bag as a handbag, rather than luggage, if it is commonly known as, or sold, or used as a handbag, whether or not it has a closure. However, other totes which are not sold or used specifically as either luggage or handbags, have no closure, but are square in design and have a double handle are usually not classified as either luggage or handbags and are generally dutiable as an article not specially provided for according to the material

² The court notes that defendant in its brief concedes the concept of a closure for a bag is a viable guideline, but it is not necessarily controlling.

of chief value. This can mean a substantially higher rate of duty than is applicable to luggage or handbags. It should be noted that this area of classification is still unclear and individual articles may be subject to a different classification from that described above. [Italic added, p. 5.]

Subsequent to the above the U.S. International Trade Commission issued USITC Publication 841, Control No. 7-1-8, p. 5, dated September 1980, "Summary of Trade and Tariff Information," covering handbags, and made the following statement:

Another significant problem has been that of determining whether totes should be classified as handbags, luggage, or articles, not specially provided for, of other materials. As pointed out in the *Summary of Trade and Tariff Information on Luggage* (USITC Publication 841, Control No. 7-1-1, November 1977) certain totes are classified as luggage. These bags generally have closures, clearly are designed for use during travel, and often are sold as part of a luggage set. To clarify this issue, the Customs Service published guidelines (C.S.D. 79-329, Dec. 27, 1978) as an aid in determining the proper classification of such bags, indicating they were not intended to be a definitive answer to every classification problem; rather, that they suggested an approach for dealing with handbags and totes. According to the guidelines, the characteristics of a handbag are as follows:

(a) Traditional handbags:

(1) Vary from small to large, the largest size is 14 inches in height, 12 to 14 inches in width, with no larger gusset than 3 inches (tapered gussets are up to 5 inches at the bottom). Some gussets are larger with this type of bag.

(2) Have one or more zippered wallet pockets for money and keys.

(3) Are compartmented (from one to four compartments).

(4) May or may not have outside pockets.

(5) Have flaps, zippered, or self-enclosures for the entire central portion of the body.

(6) Have hand and/or shoulder straps.

(b) Totes classified as handbags:

(1) The largest size is 14 inches in height, 12 to 14 inches in width, with no more than a 3-inch gusset.

(2) Must have a zippered wallet pocket (note item 7 for exception).

(3) May or may not have compartments.

(4) May or may not have outside pockets with or without closures.

(5) May or may not have a flap or other closure for the entire central portion of the bag body.

(6) Have hand and/or shoulder straps.

(7) The largest tote classified as a handbag without a zippered wallet pocket is 12 inches in height, 10 inches in width, and has a 3-inch gusset.

It is interesting to note that C.S.D. 79-329, referred to above, has the following introductory paragraph to the guidelines set forth, *supra*:

The following guidelines are used by Customs to distinguish between handbags and totes. *These guidelines are intended to be used with flexibility*, as an aid in determining the proper classification of the merchandise. *They are not intended to be a definitive answer* to every classification problem; rather, they suggest an approach for dealing with handbags and totes. [Italic supplied.]

In the case at bar it is clear the involved tote bags are used primarily by women as handbags, as defined in headnote 2(b), schedule 7, part 1, subpart D, albeit a second handbag, and accordingly are properly subject to classification as such as claimed by plaintiff. In view of the foregoing, consideration of the luggage issue need not be reached.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, November 3, 1980.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate			
P80/158	Watson, J. October 27, 1980	Colonna & Co., Inc.	67/24614, etc.	Item 515.24 21%, 15.5%, 16.5% or 10.5%	Item 515.21 10.5%, 9%, 8% or 5% per cubic foot		Colonna & Co., Inc. v. U.S. (C.D. 4941)	New York Rough quarried travertine

P80/159	Watson, J. October 27, 1980	Colonna & Co., Inc.	67/81687, etc.	Item 514.57 50¢ or 45¢ per cubic foot (items marked "A") Item 515.24 21% or 18.5% (items marked "B")	Item 514.51 27.5¢ or 24¢ per cubic foot (items marked "A") Item 515.21 10.5¢ or 9¢ per cubic foot (items marked "B")	Colonna & Co., Inc. v. U.S. (C.D. 4841)	New York Rough quarried marble (items marked "A"); rough quarried travertine (items marked "B")
P80/160	Watson, J. October 27, 1980	Domestic Marble & Stone Corp.	67/24613, etc.	Item 515.24 21% or 14.5%	Item 515.21 10.5¢ or 7¢ per cubic foot	Colonna & Co., Inc. v. U.S. (C.D. 4841)	New York Rough quarried travertine
P80/161	Watson, J. October 27, 1980	Domestic Marble & Stone Corp.	67/71842	Item 514.57 50¢ per cubic foot (items marked "A") Item 515.24 21% (items marked "B")	Item 514.51 27.5¢ per cubic foot (items marked "A") Item 515.21 10.5¢ per cubic foot (items marked "B")	Colonna & Co., Inc. v. U.S. (C.D. 4841)	New York Rough quarried marble (items marked "A"); rough quarried travertine (items marked "B")
P80/162	Watson, J. October 27, 1980	Domestic Marble & Stone Corp.	67/81688, etc.	Item 514.57 50¢, 45¢ or 40¢ per cubic foot	Item 514.51 27.5¢, 24¢ or 20¢ per cubic foot	Colonna & Co., Inc. v. U.S. (C.D. 4841)	New York Rough quarried marble

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/163	Richardson, J. October 28, 1980	Herbert Winston Associates Inc.	79-9-01986	Item 386.50 14% (Items marked "A" and "B")	Item A735.20 Free of duty pursuant to General Headnote 3(c) of TSUS, authorized by title V of Trade Act of 1974, and Ex. Order No. 11988 of 11/28/75 (Items marked "A") Item 735.20 10% (Items marked "B")	Agreed statements of facts		New York Wrist and ankle weights 1% produced within Taiwan (Items marked "A"); wrist and ankle weights (Items marked "B")	
P80/164	Watson, J. October 28, 1980	Colonna & Co., Inc.	67/66583, etc.	Item 514.57 50¢, 45¢ or 25¢ per cubic foot	Item 514.51 27.5¢, 24¢ or 13.5¢ per cubic foot	Colonna & Co., Inc. v. U.S. (C.D. 4841)		New York Rough quarried marble	
P80/165	Watson, J. October 28, 1980	World Famous Sales, Inc.	76-9-01810	Item 389.60 25¢ per lb. 15%	Item 735.20 10%	The Newman Importing Co. v. U.S. (C.D. 4648)		Boston Nylon backpacking tents	
P80/166	Maletz, J. October 28, 1980	Spiegel, Inc.	76-1-00212	Item 737.80 22%	Item 725.50 8%	Amico, Inc. v. U.S. (C.A.D. 1214)		Chicago Music boxes with revolving figures	

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P80/167	Ford, J. October 30, 1980	S. E. I enick & Company	77-3-00301, etc.	Item 184.75 7.5%	Item 470.55 4%	Joseph F. Hendrix s/o Pro- ductos Deshidratados De Mexico, S.A. v. U.S. (C.D. 4909)	New York Marigold extract:
P80/168	Ford, J. October 30, 1980	S. E. Penick & Company	77-4-00324, etc.	Item 184.75 7.5%	Item 470.55 4%	Joseph F. Hendrix s/o Productos Deshidratados De Mexico, S.A. v. U.S. (C.D. 4909)	New York Marigold extracts
P80/169	Ford, J. October 30, 1980	S. E. Penick & Company	78-2-00324, etc.	Item 184.75 7.5%	Item 470.55 4%	Joseph F. Hendrix s/o Productos Deshidratados De Mexico, S.A. v. U.S. (C.D. 4909)	New York Marigold extracts
P80/170	Richardson, J. October 30, 1980	Alltransport, Inc.	78-7-01249	Item 708.89 22.5%	Item 708.89 15%	Wild Heerbrugg Instru- ments, Inc. v. U.S. (C.D. 4767)	New York Microscopy phototubes
P80/171	Richardson, J. October 30, 1980	Calif. Custom Acc./Hawk, Division of Orion Indus- tries	76-8-01785	Item 648.97 11%	Item 660.52 4%	Agreed statement of facts	Los Angeles Wing nuts
P80/172	Richardson, J. October 30, 1980	H. E. Laufer Co., Inc.	77-1-00074-S	Item 533.66 10¢ per doz. pcs.+36% Item 533.65 10¢ per doz. pcs.+55%	Item 533.28 5¢ per doz. pcs. +10.5%	Agreed statement of facts	New York Earthenware or stoneware articles available in spec- ified sets having the claimed values
P80/173	Malatz, J. October 30, 1980	Silvestri Art Mfg. Co.	76-5-01146	Item 737.80 22%	Item 725.50 8%	Amico, Inc. v. U.S. (C.A.D. 1214)	Chicago Music boxes
P80/174	Boe, J. October 30, 1980	Westinghouse Trading Corp.	78-6-01076, etc.	Item 536.11 22.5%	Item 535.14 15%	Westinghouse Trading Com- pany v. U.S. (C.D. 4817)	New York Translucent alumina tubes
P80/175	Boe, J. October 30, 1980	Westinghouse Trading Corp.	79-5-00843, etc.	Item 538.11 22.5%	Item 535.14 15%	Westinghouse Trading Com- pany v. U.S. (C.D. 4817)	New York Translucent alumina tubes

Decisions of the United States Customs Court

Abstract Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/203	Richardson, J. October 27, 1980	Allen-Bradley Com- pany	77-1-00004	Constructed value	Represented by ap- praised unit value which appear in schedule B attached to decision and judg- ment, less profit on as- sists which was pro- vided free of charge to the assembler; these values contain amounts subject to allowances under items 807.00 and 800.00 as specified on said schedule B	Agreed statement of facts	El Paso Electric components

R80/304	Richardson, J. October 27, 1980	Conti Rubber Products Inc.	75-1-00310, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Detroit Various automotive tires
R80/305	Boe, J. October 27, 1980	Conti Rubber Products Inc.	74-10-02049, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Boston Various automotive tires
R80/306	Richardson, J. October 23, 1980	Conti Rubber Products Inc.	75-1-00307	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	New Orleans Various automotive tires
R80/307	Richardson, J. October 23, 1980	Conti Rubber Products Inc.	75-5-01295	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Cleveland Various automotive tires
R80/308	Richardson, J. October 23, 1980	Conti Rubber Products Inc.	75-5-01296, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Savannah Various automotive tires

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/309	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	75-0-02475	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed facts statement of	Boston Various automotive tires
R80/310	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	76-5-01240, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed facts statement of	San Francisco Various automotive tires
R80/311	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	76-5-01292, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed facts statement of	Philadelphia Various automotive tires
R80/312	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	76-5-01338	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed facts statement of	San Juan Various automotive tires
R80/313	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	76-7-01599	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed facts statement of	Los Angeles Various automotive tires

R80/314	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	77-1-00020	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judg- ment	Agreed statement of facts	Boston Various automotive tires
R80/315	Richardson, J. October 28, 1980	Conti Rubber Products Inc.	77-7-01156	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judg- ment	Agreed statement of facts	Detroit Various automotive tires
R80/316	Richardson, J. October 28, 1980	A. W. Fenton & Co., Inc., et al.	R65/4153	Export value	Invoice unit prices less, where applicable, items specified on in- voices as saved pack- ing	Agreed statement of facts	Cleveland Instruments and parts
R80/317	Richardson, J. October 28, 1980	Inter-Maritime Fwdg. Co. Inc.	23816-A, etc.	Cost of production	As indicated on sched- ule B attached to deci- sion and judgment	Charles Stockheimer, Inter-Maritime For- warding Co., Inc. v. U.S. (C.A.D. 642)	New York Cashmere sweaters
R80/318	Richardson, J. October 28, 1980	Inter-Maritime Fwdg. Co. Inc.	250835-A, etc.	Cost of production	As indicated on sched- ule B attached to deci- sion and judgment	Charles Stockheimer, Inter-Maritime For- warding Co., Inc. v. U.S. (C.A.D. 642)	New York Cashmere sweaters
R80/319	Richardson, J. October 28, 1980	Inter-Maritime Fwdg. Co., Inc.	276025-A, etc.	Cost of production	As indicated on sched- ule B attached to deci- sion and judgment	Charles Stockheimer, Inter-Maritime For- warding Co., Inc. v. U.S. (C.A.D. 642)	New York Cashmere sweaters

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/320	Re, C.J. October 30, 1980	Brown Boveri Corp.	76-1-00024, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency reval- uation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Various articles
R80/321	Re, C.J. October 30, 1980	Brown Boveri Corp.	77-3-00374, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency reval- uation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Portland, Ore. Various articles
R80/322	Re, C.J. October 30, 1980	Brown Boveri Corp.	77-11-04715, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency reval- uation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New Orleans Various articles
R80/323	Re, C.J. October 30, 1980	Starlight Trading, Inc.	75-7-01738	Export value	Appraised values shown on entry papers less additions included to reflect currency reval- uation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Various articles
R80/324	Re, C.J. October 30, 1980	Starlight Trading, Inc.	75-10-2667	Export value	Appraised values shown on entry papers less additions included to reflect currency reval- uation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Various articles

R80/225	Ford, J. October 30, 1980	A. W. Fenton & Co., Inc., et al.	R65/4152, etc.	Export value	Invoice unit price less, where applicable, items specified on in- voices as saved pack- ing	Agreed statement of facts	Cleveland Instruments and parts
R80/226	Richardson, J. October 30, 1980	Antonia Realty & Warehousing Corp.	75-1-00323	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judg- ment	Agreed statement of facts	San Francisco Various automotive tires
R80/227	Richardson, J. October 30, 1980	Bus and Truck Supply Co.	76-1-00090	Export value	\$51,900 per bus, plus or minus any increases or reductions in above price, due to addition or elimination of vari- ous parts, less 10%, less value of compo- nents of U.S. origin allowed on liquida- tion, plus value of any Michelin tires includ- ed in shipments	Agreed statement of facts	New Orleans Inter-city passenger buses
R80/228	Richardson, J. October 30, 1980	Bus and Truck Supply Co. Darrell J. Sakin & Co.	75-9-01588	Export value	\$54,475 per bus, plus or minus any increases or reductions in above price, due to addition or elimination of vari- ous parts, less 10%, less value of compo- nents of U.S. origin allowed on liquida- tion, plus value of any Michelin tires includ- ed in shipments	Agreed statement of facts	Houston Inter-city passenger buses

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/229	Richardson, J. October 30, 1980	Conti Rubber Products Inc.	75-1-00804	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	San Francisco Various automotive tires
R80/330	Richardson, J. October 30, 1980	Conti Rubber Products Inc.	77-3-00331, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Chicago Various automotive tires
R80/331	Richardson, J. October 30, 1980	Conti Rubber Products Inc.	77-3-00333, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	San Francisco Various automotive tires
R80/332	Richardson, J. October 30, 1980	Merit International Corp.	79-9-02212	Constructed value	Invoice unit value, plus amounts for ocean freight from Japan to Canada, and freight charges to the U.S., packed, as set forth in invoices, or in those instances where ocean freight and shipping charges are not set forth, at invoice units of value plus 10%, packed	Agreed statement of facts	Los Angeles Tape players, headphones, radio converters, speakers, etc.

R80/333	Richardson, J. October 30, 1980	Sercel Incorporated	80-4-00650	Export value	Invoice unit values plus 50% of difference between invoice unit values and appraised values	Agreed statement of facts	Houston Seismographs and parts thereof
R80/334	Richardson, J. October 30, 1980	Trans-Ocean Import Co. Inc.	247024-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Baltimore Cotton and wool hooked rugs
R80/335	Richardson, J. October 30, 1980	Trans-Ocean Import Co. Inc.	R64/19692	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Baltimore Oval tube rugs
R80/336	Boe, J. October 30, 1980	Conti Rubber Products Inc.	74-7-01790, etc.	Foreign value	Appropriate unit values claimed (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Seattle Various automotive tires
R80/337	Boe, J. October 30, 1980	Conti Rubber Products Inc.	74-9-02435, etc.	Foreign value	Appropriate unit values claimed (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Philadelphia Various automotive tires
R80/338	Boe, J. October 30, 1980	Conti Rubber Products Inc.	74-9-02437, etc.	Foreign value	Appropriate unit values claimed (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	San Juan Various automotive tires

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R30/339	Boe, J. October 30, 1980	Conti Rubber Products Inc.	74-10-02864	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Chicago Various automotive tires
R30/340	Boe, J. October 30, 1980	Conti Rubber Products Inc.	74-10-02865, etc.	Foreign value	Appropriate claimed unit values (all in Deutsche mark) listed on schedule attached to decision and judgment	Agreed statement of facts	Chicago Various automotive tires

Judgment of the U.S. Customs Court in Appealed Case

OCTOBER 30, 1980

Appeal 79-36.—Schering Corporation v. United States.—MOTION FOR SUSPENSION—CROSS-MOTION TO DISMISS—TIMELINESS OF PROTEST—DISMISSAL FOR LACK OF JURISDICTION—REQUEST FOR HEARING ON JURISDICTIONAL ISSUE.—Order of May 4, 1979 (not published) granting defendant's motion to dismiss Court No. 76-12-02625 for lack of jurisdiction (rehearing denied July 13, 1979) affirmed July 17, 1980 (C.A.D. 1250).

ERRATUM

In CUSTOMS BULLETIN, volume 14, No. 42, dated October 15, 1980, in C.D. 4873, page 15 should read as follows:

Alice Daniel, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Jerry P. Wiskin* on the memorandum) for the defendant.

MALETZ, Judge: Plaintiff voluntarily tendered \$91,992.35 to Customs in connection with a penalty investigation under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592) for understating the value of certain shipments of switches, indicator lights, and related products. Subsequently, Customs refused to refund the moneys thus tendered. Plaintiff then brought this action to obtain recovery.

Defendant has moved to dismiss the action or alternatively for summary judgment on the ground that Customs' refusal to refund the moneys tendered does not constitute an "exaction" within the meaning of section 514(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(3))¹ and that the court therefore lacks jurisdiction.

Plaintiff, on the other hand, contends that by virtue of sections 520(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(3))² and 514(a)(3), Customs' refusal to refund the additional duties thus voluntarily tendered amounts to an "exaction" within the meaning of section 514(a)(3); that the court therefore has jurisdiction; and that plaintiff is entitled to summary judgment on its cross-motion.

¹ 19 U.S.C. 1514 reads in part:

(a) Except as provided in section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by American manufacturers, producers, and wholesalers), section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud), decisions of the appropriate Customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;
(2) the classification and rate and amount of duties chargeable;
(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the U.S. Customs Court in accordance with section 2632 of title 28 within the time prescribed by section 2631 of that title.

Also relevant is 28 U.S.C. 1582 which delineates the jurisdiction of the court and provides in part:

(a) The Customs Court shall have exclusive jurisdiction of civil actions instituted by any person whose protest pursuant to the Tariff Act of 1930, as amended, has been denied, in whole or in part, by the appropriate Customs officer, where the administrative decision, including the legality of all orders and findings entering into the same, involves: (1) the appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury, * * *

For the reasons that follow, the court concludes that the court lacks jurisdiction and therefore dismisses the action.

The facts giving rise to the controversy are undisputed. They are as follows: During the period from July 9, 1970, to January 29, 1974, plaintiff imported switches, indicator lights, and other related materials which were assembled in Mexico from U.S. products. The merchandise

² 19 U.S.C. 1520(a)(3) provides in part:

(a) The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

• • • • •
(3) *Fines, penalties, and forfeitures.*—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY,
November 13, 1980.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of	}	Investigation No. 337-TA-54A
CERTAIN MULTICELLULAR PLASTIC		
FILM		

ORDER

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: November 4, 1980.

DONALD K. DUVALL,
Chief Administrative Law Judge.

Notice of Closing of New York City Field Office

AGENCY: U.S. International Trade Commission.

ACTION: Notice of closing of New York City field office.

SUMMARY: Notice is hereby given, pursuant to 5 U.S.C. 552(a), that the U.S. International Trade Commission is closing the Commission's New York City field office located in 6 World Trade Center, suite 629, New York, N.Y. 10048, effective close of business Friday,

November 7, 1980. All functions and personnel, with the exception of two employees of the Energy and Chemicals Division, are being transferred to the Commission's Washington, D.C., office located at 701 E Street NW., Washington, D.C. 20436. The two employees of the Energy and Chemicals Division are in the process of being relocated within the World Trade Center.

Services previously provided by the Commission at its New York City field office will terminate effective close of business Friday, November 7, 1980, and will henceforth be provided at the Commission's Washington, D.C., office. The Commission will no longer post formal notice of the receipt of properly filed documents, of the institution of investigations, of public hearings, and other formal Commission actions in the New York City field office and is closing the reading room previously located in room 629 of the World Trade Center.

Any persons desiring copies of formal Commission notices or seeking information from the Commission should contact the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0161. The Commission will continue to operate reading rooms in Washington, D.C., in the Office of the Secretary and in the Commission Library for interested members of the public.

In view of the changes in the Commission's organizational structure resulting from the closing of its New York City field office, the Commission hereby gives notice of its intention in due course to publish separately a revised Commission organizational statement pursuant to 5 U.S.C. 552(a)(1)(E).

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0143.

By order of the Commission.

Issued: November 4, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN APPARATUS FOR THE CON-
TINUOUS PRODUCTION OF COPPER
Rod

Investigation No. 337-TA-89

Notice of Determination, Order, and Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Determination, order, and opinion regarding the issuance of a temporary exclusion order.

SUMMARY: On October 23, 1980, the Commission voted to issue a temporary exclusion order in the above-referenced investigation. The temporary exclusion order prohibits the importation into the United States of any rolling mill described by claims 7, 9, 11, or 12, of U.S. Letters Patent 4,129,170 and components of such rolling mills.

SUPPLEMENTARY INFORMATION: This investigation, under section 337 of the Tariff Act of 1930, was instituted by notice published in the Federal Register on August 13, 1980 (45 F.R. 53923). Southwire Company of Carrollton, Ga., is the complainant in this investigation. Krupp G.m.b.H. of the Federal Republic of Germany and Krupp International, Inc. of Harrison, N.Y., were named as respondents in the August 13 notice of investigation. On October 23, 1980, the Commission voted to issue a temporary exclusion order, having found that there is reason to believe that section 337 is being violated.

A public version of the Commission's determination and order and the opinion in support thereof is available in the Office of the Secretary, USITC, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0359.

By order of the Commission.

Issued: November 6, 1980.

KENNETH R. MASON,
Secretary.

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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(TREAS. 552)



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